

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 422 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? No
2. To be referred to the Reporter or not? No :
3. Whether Their Lordships wish to see the fair copy : YES
of the judgement? No
4. Whether this case involves a substantial question : YES
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No :

CHUNILAL MOHANALAL SATHWARA

Versus

STATE OF GUJ

Appearance:

NOTICE SERVED for Petitioner
Mr. V.B.Garaniya instructed by M/S MG DOSHIT & CO
for Respondents

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 20/10/1999

ORAL JUDGEMENT

By means of filing this petition under Articles 226 & 227 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ or order directing the respondents to promote the petitioner to the post of Assistant Commissioner of Sales-Tax with effect from May 17, 1980 as well as to the post of Deputy Commissioner of Sales-Tax and to grant him all consequential benefits, such as, deemed date of

promotion, seniority, arrears of salary and other admissible allowances.

2. Pursuant to the selection made by Gujarat Public Service Commission, the petitioner was appointed on probation as Sales-Tax Officer in Gujarat Sales Tax Service Class-II. By a Circular dated February 8, 1980 issued by the department, seniority list of Sales-Tax Officers was published. In the said list, Mr. D.D.Gadhvi was shown at serial no.155; whereas name of the petitioner was shown at serial no.156 and one Mr. R.J. Parmar was placed at serial no.157. A copy of extract of seniority list along with circular is produced by the petitioner at Annexure-B to the petition. According to the petitioner, Mr. R.J.Parmar is junior to him, but by an order dated May 17, 1980, Mr. R.J. Parmar was promoted to the post of Assistant Commissioner of Sales-Tax superseding the petitioner. The petitioner claims that he was eligible and entitled to be considered for promotion to the post of Assistant Commissioner of Sales Tax, but was not considered for the promotional post and was superseded illegally, though no departmental inquiry was held against him, nor he was undergoing any departmental punishment. The petitioner has averred in the petition that the State of Gujarat created new posts of Class-II, Sales Tax Officer and framed rules called "Assistant Commissioner of Sales Tax Recruitment Rules, 1981" providing that the appointment to the post of Assistant Commissioner of Sales Tax shall be made by promotion of a person of proved merits and efficiency from the cadre of Sales Tax Officer, Class-I, who had served continuously as a Sales Tax Officer-I for 3 years and whose total period of service as Sales Tax Officer is not less than 8 years. The petitioner has claimed that as he was wrongly superseded in the matter of promotion, he made a representation dated June 15, 1982 pointing out to the authorities that he was wrongly superseded by Mr. Parmar. The petitioner has produced the representation made by him at Annexure-D to the petition. On September 6, 1982, the petitioner received a reply wherein it was stated that though the petitioner was not included in the select list prepared for the post of Assistant Commissioner of Sales Tax, his case would be considered at the time of preparation of select list of Sales Tax Officer, Class-I. A copy of the said reply is produced by the petitioner at Annexure-E to the petition. The petitioner has mentioned in the petition that the petitioner belongs to scheduled tribe and though two posts of Assistant Commissioner of Sales Tax were available, they were not filled in and thus, injustice was done to him. The petitioner has stressed that again on

January 15, 1986 certain promotions were effected by the State of Gujarat and though he was senior, his name was not included in the list of candidates to be promoted and, therefore, Special Civil Application No. 129/86 was filed claiming relief of promotion to the post of Assistant Commissioner of Sales Tax. The petitioner has mentioned that as the petitioner intended to make a representation, the petition was disposed of by an order dated March 24, 1986. A copy of order passed by the Court in Special Civil Application No. 129/86 is produced by the petitioner at Annexure-F to the petition. The petitioner has stated that he had made representation to respondent No.2 on April 8, 1986 pointing out relevant facts and circumstances, but the representation was rejected by an order dated December 19, 1986 without application of mind. A copy of order dated December 19, 1986 passed by the respondent no.1 is produced at Annexure-H to the petition. The petitioner has made a reference to adverse entries communicated to him for the year 1978-79 and stated that pursuant to representation made by him, those entries were cancelled by communications dated June 30, 1979 and August 7, 1980 and thus, though there is no adverse entry in the confidential report of the petitioner, the petitioner has been denied promotion illegally and without any basis. Under the circumstances, the petitioner has filed present petition and claimed reliefs to which reference is made earlier.

3. Mr. S.S.Wagh, Deputy Secretary, Finance Department, Sachivalaya, Gandhinagar has filed affidavit in reply on behalf of respondent no.1 and controverted the averments made in the petition. In the reply it is emphasised that the case of the petitioner for promotion was considered by the State Government, but as he was not found suitable for promotion in terms of recruitment rules of the Assistant Commissioner of Sales Tax, viz. proved merits and efficiency, he was not promoted to the post of Assistant Commissioner of Sales Tax. In the reply it is stressed that the case of the petitioner was considered by the selection committee in its meeting which was held on January 19, 1979 when the cases of Mr. D.D.Gadhvi and Mr.R.J.Parmar were considered, but as the petitioner was not found suitable for promotion to the post of Assistant Commissioner of Sales Tax, he was not promoted to the said post and Mr.R.J.Parmar was promoted to the said post. It is further stressed therein that subsequently also in the meeting held in August, 1980 again the case of the petitioner was considered for promotion to the post of Assistant Commissioner of Sales Tax, but in the meanwhile, cadre of Sales Tax Officer,

Class-I came into existence with effect from November 1, 1980 and, therefore, case of the petitioner was considered by the Committee in the meeting dated May 14, 1981 for promotion to the post of Sales Tax Officer, Class-I. What is asserted in the reply is that Gujarat Public Service Commission did not recommend the case of the petitioner for promotion to the post of Sales Tax Officer, Class-I and as the Government has accepted advice of Gujarat Public Service Commission, the petitioner was not promoted to the post of Sales Tax Officer, Class-I. According to the deponent of the reply, first promotion orders in the cadre of Sales Tax Officer, Class-I post were issued on June 24, 1981 whereby 50 Sales Tax Officers, Class-II had been promoted to the post of Sales Tax Officers, Class-I and the petitioner stood superseded by 50 officers of Class-I cadre. It is further mentioned in the reply that roster point is applicable in promotion from Sales Tax Officer, class-II post to Sales Tax Officer, Class-I post only and not beyond that level and, therefore, the petitioner is not entitled to get any benefit of roster point for promotion from the cadre of Sales-Tax Officer, Class-I to the cadre of Assistant Commissioner of Sales-Tax. It is claimed in the reply that the petitioner was communicated adverse remarks for the years 1976-77 and 1977-78, but had not made any representation against the adverse remarks of 1977-78, which means that he had accepted the adverse remarks for that year and, therefore, the grievance made by the petitioner that Mr. Parmar ought not to have been promoted to the post of Assistant Commissioner of Sales Tax, is illfounded. It is asserted that after coming into existence of new cadre of Sales Tax Officer, Class-I, the question of considering the petitioner for promotion to the post of Assistant Commissioner of Sales Tax directly does not arise, as he cannot claim promotion to the post of Assistant Commissioner of Sales Tax directly from the post of Sales Tax Officer, Class-II. Mr. Wagh has also clarified that in the meeting dated February 25, 1983, case of the petitioner was considered for selection to the post of Sales Tax Officer, Class-I and the petitioner was promoted to the said post with effect from April 18, 1984. By filing the reply, what is asserted on behalf of respondent no.1 is that claim of the petitioner for direct promotion to the post of Assistant Commissioner of Sales Tax is misconceived and, therefore, the petition should be dismissed. It may be stated that no rejoinder is filed by the petitioner to the affidavit-in-reply.

4. It may be mentioned that by an order dated September 3, 1987, rule was issued in the matter.

Thereafter, learned Counsel engaged by the petitioner for pleading his case was elevated as a Judge of this Court. Thereupon notice was issued by the Office to the petitioner informing him that learned advocate engaged by him is elevated as a Judge of this Court and, therefore, he should make necessary arrangement for the purpose of either engaging another advocate or appearing in person before Court. It was intimated that on failure to make necessary arrangement, the matter would be decided ex parte on merits. Though the petitioner is duly served with the above-referred to notice, he has neither engaged any advocate to plead his case, nor appeared before Court for arguing his case. This is an old matter i.e. petition of the year 1987 and is listed for final hearing six times. Under the circumstances, it is decided to hear the matter on merits. I have considered the averments made in the petition as well as documents produced on record along with the petition and I have also heard Mr. V.B.Garaniya, learned A.G.P. before deciding present petition.

5. It is well settled that no employee has fundamental right to be promoted to higher post. The only right which an employee can claim is that his case for promotion should be considered by the authorities. The affidavit-in-reply filed on behalf of respondent no.1 makes it clear that case of the petitioner for promotion was considered along with the cases of Mr. D.D.Gadhvi and Mr. R.J.Parmar, but as the petitioner was not found suitable for promotion, he was not promoted to the promotional post. It is relevant to note that cadre of Sales Tax Officer, Class-I came into existence with effect from November 1, 1980 and, therefore, the petitioner who was serving in the cadre of Sales Tax Officer, Class-II is not entitled to be promoted directly to the post of Assistant Commissioner of Sales Tax. As per the relevant rules, Sales Tax Officer, Class-II can be promoted to the post of Sales Tax Officer, Class-I on fulfilment of certain criteria. The case of the petitioner for promotion to the post of Sales Tax Officer, Class-I was considered by the respondents, but Gujarat Public Service Commission had not recommended his case for promotion to the post of Sales Tax Officer, Class-I and, therefore, the respondents had not promoted the petitioner to the said post after accepting the advice of Gujarat Public Service Commission. It is further relevant to notice that in the meeting which was held on February 25, 1983, Selection Committee had considered the case of the petitioner for promotion to the post of Sales Tax Officer, Class-I and he was promoted to the said post with effect from April 18, 1984. The averments made in the reply affidavit clearly

indicate that the petitioner was communicated adverse remarks for the years 1976-77 and 1977-78 and the petitioner had not made any representation against adverse remarks of the year 1977-78. The criteria for promotion to the post of Assistant Commissioner of Sales Tax being proved merits and efficiency, it cannot be said that decision of the respondents not to promote the petitioner to the said post is arbitrary or unreasonable in any manner so as to warrant interference of the Court in the present petition which is filed under Article 226 of the Constitution. It is relevant to notice that though the petitioner has claimed that Mr. R.J. Parmar, who was junior to him is wrongly promoted, the petitioner has not chosen to implead him as one of the respondents in the petition. Similarly, the claim advanced by Mr. S.S.Wagh in the affidavit-in-reply to the effect that by first promotion orders dated June 24, 1981, 50 Sales Tax Officers, Class-II were promoted to the post of Sales Tax Officers, Class-I cannot be ignored. In view of the provisions of Assistant Commissioner of Sales Tax Recruitment Rules of 1981, promotion to the post of Assistant Commissioner of Sales Tax can be made only from the cadre of Sales Tax Officers, Class-I and not directly from the cadre of Sales Tax Officers, Class-II. It is important to notice that the petitioner is not claiming promotion to the post of Sales Tax Officer, Class-I in this petition. If the respondents are directed to promote the petitioner to the post of Assistant Commissioner of Sales Tax and then to the post of Deputy Commissioner of Sales Tax as claimed in the petition, it will affect those 50 officers also who are promoted to the post of Sales Tax Officer, Class-I. It is well settled that in the matter of promotion, those who are likely to be affected should be impleaded as parties and should be given opportunity to defend orders passed in their favour. Thus, it becomes evident that even otherwise the petitioner is not entitled to the reliefs claimed in the petition, as the petitioner has failed to implead necessary parties in the petition. As action of the respondents in not promoting the petitioner to the post of Assistant Commissioner of Sales Tax is not found to be either arbitrary or unreasonable or contrary to statutory rules, the petition cannot be entertained and is liable to be dismissed.

For the foregoing reasons, the petition fails and is dismissed. Rule is discharged, with no order as to costs.

(patel)